

MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, September 22, 2005

MEMBERS PRESENT: Robert V. Lessard, Chairman
 Tom McGuirk
 Jennifer Truesdale
 Bill O'Brien
 Jack Lessard

OTHERS PRESENT: Kevin Schultz, Building Inspector
 Shirley Doheny, Recording Secretary

Chairman Lessard explained the format of the meeting. Kevin Schultz led the Pledge of allegiance led.

56-05 The petition of Colsak Investment, LLC for property located at 426 Winnacunnet Road seeking relief from Articles 1.3 (as to 4.1.1, 8.2.3 and 8.2.6) to create a single family residential lot from the existing cabin colony, which lot will be completely conforming but will cause the remaining land to become more nonconforming. This property is located at Map 208, Lot 48 in a RA/RB zone.

Peter Saari and Brian Hayes came forward. They are not creating any nonconformity in the lot they are creating. The problem is with the remainder of the lot. The impact is on this lot only. They are putting a single family house in a RA/RB zone.

Questions from the Board

Bill O'Brien asked how would the lot become more non-conforming. The area is nonconforming. The other non-conforming aside from the area is the 40-foot setback. Mr. O'Brien asked about Unit 1. Atty. Saari stated that it was closer to the lot line than Unit 7. He also asked about the tree line that was cut down. He was advised that it was the neighbor's property.

Comments from the audience

None

Back to Board

Vic Lessard asked what would be done with the cabins next door. Peter Saari stated that they are condominiums already. Vic Lessard stated that he thinks the Planning Board should have been made aware of this potential lot. Mr. Hayes stated that the neighbors liked the idea of a single-family house lot there because it limits what else can happen. Peter Saari stated that they would have to go back to the Planning Board. Bill O'Brien stated that they would not be able to make another lot behind the proposed new lot. They wouldn't have the depth to put a cul de sac in there. Kevin Schultz asked if there was an Association. Mr. Schultz asked Atty. Saari about the consent that the application indicated was attached. Atty. Saari stated that there was no consent attached because none of the units had been sold. Presently, there is a single owner. Tom McGuirk asked about the hardship. There is nothing else that can be done with this lot without variances. The other hardship is that they have enough area to get five lots but they don't the depth to get a road in there to service it. Bill O'Brien asked if it would be improper to ask them to withdraw and go before the Planning Board first. Tom McGuirk asked if there was not enough depth for any road. Atty. Saari stated that because it was a subdivision regulation and not a matter of zoning, the regulation could be waived for a shorter road if Public Works and the

Planning Board would allow it. Peter stated that the neighbors like this rather than cluster. Jack Lessard joined the Board. Mr. O'Brien asked that he not participate in this petition because he hadn't been there for the full discussion. Kevin thought it might require a variance to move a condo out of the buffer. Tom McGuirk moved to deny this petition. Bill O'Brien seconded.

Vote: 3 yes-1 abstain

Petition denied

57-05 The petition of Richard Stiles, Jr., through Eric Marquis, for property located at 16 Glen Road seeking relief from Articles 1.3, 4.5.1 and 4.5.2 to remove and rebuild the second floor and up of an existing structure that does not meet setbacks. This property is located at Map 150, Lot 39 in a RB zone.

Jeff Merrill and Eric Marquis came forward. The property is non-conforming to the side and to the front. Mr. Merrill passed out pictures of the existing house. They are looking to take off the top floor and replace it. He went through the criteria as submitted on the petition.

Questions from the Board

Bill O'Brien asked if the plan is to take the garage level and turn it into living space. Mr. Merrill stated that the deck on the second floor would not be in the new structure. The parking will be in the driveway up the side. Mr. O'Brien also asked about the third floor. There are six windows in the proposed attic he assumes that it would be converted at some point. The applicant stated that there is no plan to have three floors of living space at this time. The third floor is to be used for storage because they are taking away the garage.

Comments from the audience

Irene Noonan of 16 Mill Pond Lane came forward. She asked about the walk-up attic. She was advised the 35-foot height is from the ground up. She disagrees that the heating system is new. It makes a lot of noise when it goes on. Vic Lessard read a letter sent in support of petition by a neighbor

Back to Board

Vic Lessard polled Board regarding the five criteria. Bill O'Brien made the motion to grant the petition. Jack Lessard seconded

Vote: 5-0

Petition granted

58-05 The petition of Hampton Marina Condo Association for property located at 17 Whitten Street, Units 1-7, seeking relief from a prior 1983 Zoning Board Decision with the condition of seasonal use only. We are currently requesting that year round use be approved when the cottages are brought up to Code standards for year round occupancy. This property is located at Map 295, Lot 41 in a BS zone.

Atty Steve Ells appeared on behalf of Hampton Marina Condominium Association. Craig Mullen was with him. Atty Ells reminded the Board about the prior hearing when variances were granted for two of the units to renovate and slightly expand. He stated that when the Board approved this condominium conversion in 1983, the Board imposed a restriction that there only be seasonal use. The Association had voted to allow two of the units to come before this Board. They would like to build these units in cooperation with the Building Inspector's office to the current standards in order to get year round occupancy certificate. They are now before this Board to ask that the restriction that was imposed in 1983 be eliminated. Atty Ells referenced the minutes of the meeting when the conversion was granted. He believes they indicate that Mr. Hutchinson was

contemplating that they might some day be year round and they would need occupancy permits. Atty. Ells went through the criteria as presented in the petition.

Questions from the Board

Vic Lessard asked how much larger they are. Atty Ells advised they are going up, using the same footprint with a balcony overhang on the front. The condo association has approved this plan and is willing to winterize the water and sewer. Bill O'Brien asked about the snow. Atty Ells stated that if there were not enough room, they would have to pay to truck the snow away.

Comments from the audience

None

Back to Board

Jennifer Truesdale motioned to approve, Tom McGuirk seconded. The Board agrees that the criteria were met.

Vote: 5-0

Petition granted

59-05 The petition of Phyllis Grammatic, through option holder M.K. Ashworth LLC, for property located at 580 Winnacunnet Road seeking relief from Articles 4.1.1, 8.2.1, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to replace existing 22 unit motel with 30 residential condominium units. This property is located at Map 235, Lot 7 in a BS zone.

Atty Ells and Kevin Derrivan and David Lopatcich, architect came forward. This is currently a 22-unit motel. The proposal is to demolish motel and construct a thirty-unit residential condominium project on the site. The parking will be onsite and at grade in parking garage. There will be four floors above the parking. Atty Ells stated the architect and developer met with the abutters recently and hopefully answered a lot of their questions. Mr. Lopatich came forward and described the renderings to the Board. He stated this site is a 30,900 square feet. He described the platform above the garage with two buildings of four stories above. Vic Lessard asked about the height of the building. The total height is 50 feet high with elevator overrides. This is a steel frame building. The roof is continuous even though the buildings are separate. He then showed the elevation. Atty Ells went through the criteria as stated in the petition. They are asking for area variance rather than use variance. If they were to setback 40 feet from each property line they would be able to do very little. Atty Ells passed out a density chart comparing this project to other condo projects in the area.

Questions from the Board

Bill O'Brien asked about the type elevator. Mechanicals are in down in parking level. Only four to five feet is needed above the building for elevator and override. He also asked what the impact on the stream is. The closest point to the stream is 50 feet away. Parking area is closed in by vegetation. If there is more snow than can be held it would be trucked away. Mr. Lessard advised that there are not many places where the snow can be dumped. The narrow part of the property will be landscaped not an exit for parking. The parking is a one-way parking system with designated spots.

Comments from the audience

Sean Twomey of Red Coat Lane came forward speaking on behalf of Red Coat neighbors. He asked what the density is. Kevin Schultz answered 2500 sq. feet per dwelling unit. He asked

about recreation area. The position is that the recreation is the ocean. Mr. Lopatich stated that there will be walks around the outside of the building; passive recreation is what they are providing. Some concerns created by allowing less than 40-foot setbacks include issues of privacy and fire safety. Where will fumes and exhaust be vented? He requested a traffic study be done before allowing this project. Vic Lessard advised that Planning Board would be responsible for the traffic study. This development overwhelms the surrounding properties. Some neighbors provided a demonstration to show the prospective of Red coat Lane. Using a model they demonstrated the height of the proposed structure in comparison to the houses on Red Coat Lane. Mr. Twomey stated that it is in a flood zone. All other multi family condos in the area were constructed before multi family changes and backed up to a marsh, not a residential neighborhood. He disagrees with the statement that it will not diminish the value or surrounding properties. He referenced a quote from a certified appraiser justifying this statement that. He raised questions regarding snow removal, sewerage, drainage and fire. Fire, how will they get there with ladders? A five-story building is extreme over intensification of this property. A reasonable use can be made with a smaller structure. It overwhelms the surrounding properties. He requested the Board deny the variance.

Kathleen Monet, of 9 Recoat Lane submitted to the Board a picture of her one story home. She believes it will diminish their property value, especially if built within 4 feet from the boundary line. She agrees with Mr. Twomey.

Next to speak were Hubie and Joan McQuade of 12 Kings Highway and speaking for Mary Emmott of 3 Redcoat Lane. He stated that the presentation that had been given to the neighbors did not include elevation heights from the side or any distances from properties from Redcoat Lane. The exhaust from the garage concerns them. He believes it is a very high density for less than an acre of land. He expressed concern about loss of sunlight, air and views.

John Sideris of 8 Redcoat came forward. He referenced a letter that he submitted to the Board for the record. He shares the feelings that were expressed by Sean Twomey. He believes this project needs to be scaled back. He stated that the other properties that were referred to don't compare to this project in that they are backed by the marsh not residential neighborhoods.

Shirley Garrett of 11 Red Coat Lane came forward; she referenced a letter she submitted to the Board. She agrees with Sean Twomey. She is in her declining years and would like to see the sun and the moon and the stars. She asks that the Board deny the petition.

Paul Drew of 4 Red Coat Lane expressed concern about the elevator. He believes it is in a flood zone. Kevin stated that anything mechanical has to be at or above the flood elevation. Mr. Drew's second concern is that he thinks the creek is a tidal inlet and outlet. He believes the state requirement is 100 feet. Atty Ells is aware that they have to go before the State for relief from the 100 foot.

Kelly Martin of 12 Red Coat Lane asked the size of the platform to find out how they came up with recreation area. She thinks they are really stretching the required recreation area. With reference to 4.1.1 regarding density, she understands that Sandpiper and Village were built before multi-family dwelling regulations were in a BS zone and therefore are not good comparisons. She submitted a letter to be put in the record.

Neal and Joan McCarron of 14 Red Coat came forward. They didn't get notice because they are abutters to abutters. They concur with Mr. Twomey's comments. They believe the request is excessive and will be a detriment to their property. In addition to property values the present enjoyment of their property would be in jeopardy. He asks that they deny the request for variance.

Beverly Twomey of Red Coat Lane came forward. They are in their backyard all the time. She doesn't want to see this structure in their backyard.

Patricia Carroll of 566 Winnacunnet Road, she unequivocally agrees with everything that Sean stated. The building is lovely but does not belong in this location. She is also very concerned about the creek. The creek is eroding.

Atty Ells stated that the owner of this property also has rights to be protected. Article 8 should never have been applied to BS zone. He agrees they do not have 400 feet for recreation but a lot of recreation goes on offsite. He states that there is the beach as well as areas to walk. The ordinance allows rebuilding on same footprint, which is closer to stream than what they are asking.

Back to Board

Bill O'Brien asked if they had any sun angle drawings. Because they are abutting RB zones he would have a problem granting variance. Vic Lessard also thinks this is not the location for this structure. The place is run down, but Vic went to Red Coat Lane. He doesn't think a ladder truck could get there. He doesn't think this compares to other properties mentioned. Tom McGuirk says it is a well designed but it is not the right place. It is too big. Jennifer Truesdale agrees with other Board members. Jack Lessard agrees with the Board. He agrees it is a nice building, but it is too much for this lot. Jack Lessard motioned to accept submitted letters into the record. Tom McGuirk seconded. Vote 5-0 to accept letters. Bill O'Brien motioned to deny petition, Jack Lessard seconded motion to deny.

Vote: 4-0-1

Petition Denied

Two minute break

60-05 The petition of Jean Boudreau, through option holder M.K. Ashworth LLC, for property located at 154-156 Ashworth Avenue seeking relief from Articles 4.1.1, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to construct a seven (7) unit residential condominium, existing home and motel to be demolished. This property is located at Map 293, Lots 92 and 110 in a BS zone.

Jack Lessard stepped down from this petition. Steve Ells, Kevin Derrivan and David Lopatich, the architect came forward. He reminded the Board that they were before the Board not too long ago. They are here to start anew. They are here to demolish old hotel and single family home and replace two structures with 7-unit residential condominium. Two lots will be merged to one lot. Petitioner passed out renderings to the Board. Parking will be on site. There is sufficient space to plant a couple of trees in front of the building. On the north and south side of the garage they will be shielded with a metal fence. The building with elevator override is fifty feet. Vic Lessard asked what would be used for floors. They are not sure yet. Building is fully sprinkled

Questions from the Board

Bill O'Brien asked about elevator. It is hole less type elevator, hydraulic with a machine room at grade. Bill O'Brien asked about kitchen on top. It is not cooking kitchen. There is no on-site recreation area. They are a block away from the beach.

Comments from the audience

Stan Wojcik. He is in RB zone He can't see how it is a hardship to owner. He believes it would diminish property values of abutters. He also asked about a mold test. No test had been done. He read a letter from a realtor that stated that a building of this size would diminish values. He believes the requirements of the ordinance are for a reason. He doesn't believe it fits in this

location. They are concerned about fire and safety. If there were a fire how would fire trucks get to back of the building? He asked how close this structure is to the Bragg House. Atty. Ells answered 5.5 feet at the closest point. There is a point where the setback is four feet. The Bragg house will be encroaching creating a more non-conforming lot. Vic Lessard read letter sent in support of petition by a neighbor. He asked why the Town of Hampton has building codes and requirements only to ignore them. Vic Lessard said they have a right to come before this Board. This Board must take each petition individually. When Mr. Wojcik bought his property, he relieved two parties from hardships. They are creating a hardship for the Bragg house, which doesn't have any parking. The building will block the sun from his property. He is also concerned about mold. He is also concerned about drainage. Vic Lessard stated that the planning Board would address the drainage issue. This building doesn't blend in with this neighborhood. He is opposed to this petition.

David MacDonald of 5 Bragg Ave. came forward. His concern is that it will be an imposing building in the neighborhood. He is opposed.

8 Bragg Ave. She is concerned about drainage especially in the back. She asked about a test of the sun. She is concerned about mold. The parking for Bragg house is a problem. She is concerned also about snow removal. She also asked about garbage. There is a holding area and it will be taken away when necessary. She is opposed to this project.

Back to Board

Atty Ells stated they are not asking for a height variance. He doesn't believe it will diminish value of the surrounding properties. Jack Lessard thinks it is a lot of house for the lot. It's too big for the lot and the area. Tom McGuirk likes the project. He has a big building in front of his house. It doesn't cut down on the sun. The proposed building only affects the sunlight is the neighbors' back yards not their houses. The parking for the Bragg house is not the responsibility of the petitioner. If it were a hotel, they wouldn't need most variances and the structure could probably be built. This design with balconies on top will allow more sunlight rather than less. This fits into the master plan vision that they had. A lot of the flooding is because of the tide not the building. He doesn't believe that it will diminish the value. Vic Lessard doesn't believe it meets the requirements for multi family. Tom McGuirk wanted the neighbors to know that a motel could be built. Jack Lessard motioned to not approve. Bill O'Brien seconded.

ale motioned to grant petition. Tom McGuirk seconded.

Vote: 3-1

Petition denied

61-05 The petition of Thomas, Edwin III & David Batchelder for property located at 411 Exeter Road seeking relief from Article 3.30 to set up a candle workshop inside one of the existing outbuildings on the property. This property is located at Map 37, Lot 6 in a RAA zone.

Peter Saari and Skip Batchelder, sitting in for his brother came forward. This property is historically a farm although it is not being used as one. There may an employee or two. It is a unique opportunity. This craft is non intrusive. It is a rural use. It is consistent with the neighborhood.

Comments from the audience

None

Back to the Board

Vic Lessard gave some history of the property. He agrees with Atty Saari.

Jack Lessard motioned to approve petition. Jennifer Truesdale seconded. Vic Lessard polled the Board regarding the criteria.

Vote: 5 – 0

Petition granted

Adjourn at 11:15

Hampton Zoning Board of Adjustment
Robert (Vic) Lessard, Chairman